

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

ROESCHEN'S HEALTHCARE, LLC,
d/b/a Roeschen's Omnicare

Plaintiff,

v.

Case No. 09-CV-205

MILLWAY HEALTH CARE, LLC,
d/b/a Millway Care Center,

Defendant.

ORDER

Plaintiff Roeschen's Healthcare, LLC ("Roeschen's Healthcare") filed suit in state court against Defendant Millway Health Care, LLC ("Millway") alleging claims for breach of a promissory note, breach of a pharmacy services agreement, *quantum meruit*, and unjust enrichment. Millway subsequently removed the case to this court based on diversity. After removal, Millway filed a motion to dismiss the action due to insufficient service of process, pursuant to Federal Rule of Civil Procedure 12(b)(5). In its motion, Millway asserts that the company's registered agent, Maureen Molony ("Molony") was not personally served. Instead, the plaintiff left the summons and complaint at the Milwaukee, Wisconsin, office of Molony's law firm, instead of serving her at the Madison office, her business address. In response to Millway's motion to dismiss, Roeschen's Healthcare served Molony personally at her Madison office on March 10, 2009, and filed a return of service with the court. The summons indicates that Millway must file an answer within twenty days of service,

a deadline of March 30, 2009. However, Millway failed to file an answer. On April 16, 2009, Roeschen's Healthcare filed a motion for default judgement.

Millway's motion to dismiss remains pending before the court. However, the court finds that Millway's motion is moot because Roeschen's Healthcare cured any deficient service by personally serving Molony at her Madison office on March 10, 2009. Therefore, the court will deny Millway's motion.


Roeschen's Healthcare's motion for default judgment is also pending before the court. To date, Millway has filed neither an answer to Roeschen's Healthcare's complaint, nor a response to the motion for default judgment. Unless such a pleading is filed, the court will be compelled to enter an order for default judgment.

Accordingly,

IT IS ORDERED that the defendant's motion to dismiss due to insufficient service of process (Docket #3) be and the same is hereby **DENIED as moot**.

Dated at Milwaukee, Wisconsin, this 29th day of April, 2009.

BY THE COURT:



J.P. Stadtmueller
U.S. District Judge